

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

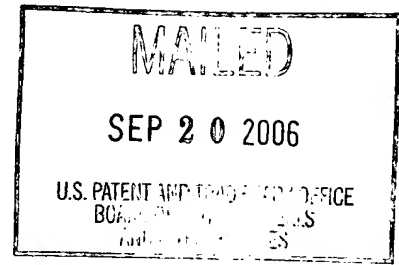
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex Parte PETER FREDRIK JANSON

Appeal No. 2006-2103
Application No. 09/780,817

ON BRIEF



Before THOMAS, KRASS, and RUGGIERO, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 1-27, which are all of the claims pending in this application.

The claimed invention relates to the synchronization of data between a graphical client and a stateless server in which the root object nodes of a scene, including references to other object nodes, are downloaded from the server to the client. A set of visible and undefined object nodes is determined through the intersection of the bounding volumes for the object nodes with a view frustum in the graphical client. Upon the downloading of the

object nodes in the set of visible and undefined object nodes from the server to the client, the graphical client renders the scene from the object nodes.

Claim 1 is illustrative of the claimed invention and reads as follows:

1. A computer-implemented method for synchronizing data between a graphical client and a server, comprising:

(a) downloading one or more root object nodes of a scene from the server to the graphical client, wherein the scene is a collection of parameter values for rendering a model;

(b) intersecting bounding volumes for the object nodes with a view frustum in the graphical client to determine a set of visible and undefined object nodes, wherein the view frustum is the part of the model between cutting planes defined by the scene; and

(c) downloading the object nodes in the set of visible and undefined object nodes from the server to the graphical client, wherein the graphical client renders the scene from the object nodes.

The Examiner relies on the following prior art:

Fisher	6,331,858	Dec. 18, 2001 (filed Jun. 02, 1998)
Schmeidler et al. (Schmeidler)	6,374,402	Apr. 16, 2002 (filed May 12, 1999)
Berger et al. (Berger)	6,414,693	Jul. 02, 2002 (filed Oct. 12, 1999)

Claims 1-7, 10-16, and 19-25 stand finally rejected under 35 U.S.C. § 102(e) as being anticipated by Fisher. Claims 8, 9, 17, 18, 26, and 27 stand finally rejected under 35 U.S.C. § 103(a). As evidence of obviousness, the Examiner offers Fisher in view of Schmeidler with respect to claims 8, 17, and 26, and Fisher in view of Berger with respect to claims 9, 18, and 27.

Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the Briefs¹ and Answer for their respective details.

OPINION

We have fully considered the subject matter on appeal, the rejections advanced by the Examiner, and the evidence of anticipation and obviousness relied upon by the Examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellant's arguments set forth in the Briefs along with the Examiner's rationale in support of the rejections and arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the Fisher reference does not fully meet the invention as set forth in claims 1-7, 10-16, and 19-25. With respect to the Examiner's 35 U.S.C. § 103(a) rejection, we are also of the view that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the obviousness of the invention as recited in claims 8, 9, 17, 18, 26, and 27. Accordingly, we reverse.

We consider first the rejection of claims 1-7, 10-16, and 19-25 under 35 U.S.C. § 102(e) as being anticipated by Fisher. Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element

¹ The Appeal Brief was filed September 15, 2005, 2005. In response to the Examiner's Answer mailed December 12, 2005, a Reply Brief was filed February 13, 2006, which was acknowledged and entered by the Examiner as indicated in the communication mailed May 2, 2006.

of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

With respect to the appealed independent claims 1, 10, and 19, the Examiner attempts to read the various limitations on the disclosure of Fisher. In particular, the Examiner (Answer, pages 3-5) points to the disclosure at column 3, lines 14-40, column 4, lines 62-65, and column 5, lines 10-50 of Fisher which describes the illustrations in Fisher's Figures 3-5.

Appellant's arguments in response assert that the Examiner has not shown how each of the claimed features is present in the disclosure of Fisher so as to establish a case of anticipation. In particular, Appellant contends (Brief, page 10; Reply Brief, pages 5-7) that, in contrast to the claimed invention, Fisher provides no disclosure of the intersecting of object node bounding volumes with the view frustum of a graphical client to determine a set of visible and undefined object nodes.

After reviewing the Fisher reference in light of the arguments of record, we are in general agreement with Appellant's position as stated in the Briefs. While we don't necessarily disagree with the Examiner's interpretation (Answer, page 8) of the "pre-download stage" feature suggested at column 5, lines 25-60 of Fisher, we fail to see how this disclosure would satisfy the specific VU object node set determination operation set forth in each of the appealed independent claims. Even assuming, arguendo, that Fisher makes a

determination which visible and undefined objects need to be added to a new scene, we find no description of any such determination in Fisher which would correspond to the specific VU set determination operation recited in the claims.

In fact, the Examiner (Answer, pages 3 and 8), rather than pointing to where the claimed VU set determination feature appears in the Fisher reference, merely suggests that the various claimed features are inherent in Fisher. We agree with Appellant (Brief, page 10; Reply Brief, pages 5-7), however, that any suggestion of inherency with regard to the existence of the claimed VU set determination feature in Fisher is simply not supported by any disclosure in the Fisher reference. To establish inherency, evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference and would be recognized as such by persons of ordinary skill. In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) citing Continental Can Co. v. Monsanto Co., 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991). “Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” Id. citing Continental, 948 F.2d at 1269, 20 USPQ2d at 1749.

In view of the above discussion, since all of the claim limitations are not present in the disclosure of Fisher, we do not sustain the Examiner’s 35 U.S.C. § 102(e) rejection of independent claims 1, 10, and 19, nor of claims 2-7, 11-16, and 20-25 dependent thereon.

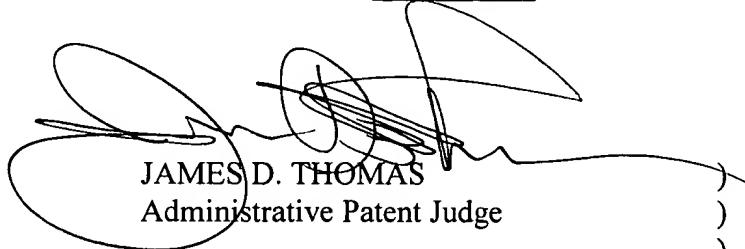
Turning to a consideration of the Examiner’s 35 U.S.C. § 103(a) rejection of dependent claims 8, 9, 17, 18, 26, and 27 based on separate combinations of Fisher with

Appeal No. 2006-2103
Application No. 09/780,817


Schmeidler and Berger, we do not sustain this rejection as well. The Schmeidler and Berger references have been added to Fisher by the Examiner to address, respectively, the graphical user interface and target password change policy features set forth in the rejected dependent claims. We find nothing, however, in the disclosures of Schmeidler or Berger, taken individually or collectively, which would overcome the innate deficiencies of Fisher discussed supra.

In summary, we have not sustained either of the Examiner's rejections of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1-27 is reversed.

REVERSED


JAMES D. THOMAS
Administrative Patent Judge


ERROL A. KRASS
Administrative Patent Judge


JOSEPH F. RUGGIERO
Administrative Patent Judge

)
)
)
)
) **BOARD OF PATENT**
) **APPEALS AND**
) **INTERFERENCES**
)
)
)
)

JFR/rwk

Appeal No. 2006-2103
Application No. 09/780,817

GATES & COOPER LLP
HOWARD HUGHES CENTER
6701 CENTER DRIVE WEST
SUITE 1050
LOS ANGELES, CA 90045